A.F.R.

23-03-2006

50

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 1391 OF 2006

PETITIONER		Sheshmal Surana, aged 67 years, son of late Shri Narsinghmal Surana, resident of village Gumra, P.S. Gidam, District Dantewara, Bastar (Chhattisgarh)
	Vs.	
RESPONDENTS	1.	State of Chhattisgarh, through the Secretary, Forest Department, Raipur
	2.	The Competent Authority/ Sub Divisional Forest Officer, Gidam, District Dantewada, Bastar (Chhattisgarh)
	3.	The Conservator of Forest, Jagdalpur circle, Jagdalpur, Bastar (Chhattisgarh)

Present : Shri Somnath Verma, learned counsel for the petitioner.
Shri Yashwant Singh, learned G.A. for the State.

(ORAL ORDER)
(Passed on 23rd March, 2006)

This writ petition arises out of a confiscation order passed by the Competent Authority / Sub Divisional Forest Officer, Gidam, Dantewada, Bastar District, the 2nd respondent herein under sub-Section (3) of Section 52 of the Indian Forest Act, 1927 (for short "the Act"). The petitioner is admittedly the owner of the motor vehicle involved in the forest-offence. The only defence put-forth by the petitioner before the 2nd respondent against the proposed confiscation of the motor vehicle and the goods found therein was that the motor vehicle was used by his driver without his notice and knowledge and he was in no way connived with his driver or

anyone else in committing the forest-offence. This plea was considered by the 2nd respondent and the same was rejected. Being aggrieved by the order of the 2nd respondent dated 01-03-2004, the petitioner preferred an appeal to the Conservator of Forest, Jagdalpur, the 3rd respondent herein. The 3rd respondent dismissed the appeal by his order dated 27-04-2005. Thereafter, the petitioner preferred a revision before the Sessions Court, Jagdalpur. The Sessions Court dismissed his revision on the ground of limitation by its order dated 04-02-2006. Hence, this writ petition is filed under Article 226 of the Constitution of India.

(2) Learned counsel for the petitioner drawing the attention of the Court to sub-Section (5) of the Section 52 of the Act would contend that the forest-offence was committed by his driver by using motor vehicle owned by him without his knowledge, and since the petitioner did not connive with the driver or anyone else in the commission of the forest-offence, the exclusionary clause enacted in sub-Section (5) of Section 52 of the Act is attracted and, therefore, the 2nd respondent ought not to have confiscated the motor vehicle and the goods. In support of his submission, learned counsel for the petitioner would place reliance on the Judgment of a learned Single Judge of M.P. High Court in the case of **State of M.P. Vs. Ram Gopal Sharma** [1].

(3) I do not find any merit in the above contention of learned counsel for the petitioner. Sub- Section (5) of Section 52 of the Act reads as follows :

> "(5). No order of confiscation under sub-Section (3) of any tools, vehicles, boats, ropes, chains or any other

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article (other than timber or forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest-offence. "

(4) It is trite that to bring the case of the petitioner within the exclusionary clause, it was the burden of the petitioner to prove to the satisfaction of the Competent Authority that the forest-offence was committed by his driver without his knowledge and information and that he did not connive with the offender at any stage of commission of the offence. In addition to proving as above, it was also the burden of the petitioner to prove that before his driver committed the forest-offence, he had taken all reasonable and necessary precautions against the use of the vehicle in the commission of forest-offence. The question to be considered is whether such burden cast on the petitioner was satisfactorily discharged by the petitioner by adducing substantive legal evidence. Having perused the material placed before the Court and the orders of the authorities below, the answer to the question should be emphatic 'no'. Except self-serving statement, the petitioner has not adduced any independent trustworthy material or evidence before the Competent Authority to discharge the above burden. Be that as it may, this Court cannot act as an appellate Court under Article 226 of the Constitution of India and review the finding of fact. The only thing to be seen is whether the finding recorded by the Competent Authority as affirmed by the Appellate Court is based on some legal evidence. The Court cannot go

53

into sufficiency or adequacy of the evidence on the basis of which the factual finding is recorded. I am satisfied that the petitioner has utterly failed to establish the plea taken by him before the 2nd respondent. In that view of the matter, the confiscation order passed by 2nd respondent could not be faulted with. The writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice